

ORDINANCE NO. 1248

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO ESTABLISHING A 45-DAY ORDINANCE TO AMEND TITLE 10 OF THE SAUSALITO MUNICIPAL CODE DELETING SECTION 10.44.320 AND ADDING CHAPTER 10.47 IN ORDER TO ESTABLISH MARIJUANA REGULATION

WHEREAS, the California State Legislature adopted the Medical Cannabis Regulation and Safety Act ("MCRSA"), which became effective January 2, 2016 and regulates medical marijuana; and

WHEREAS, in response to MCRSA, the Sausalito City Council adopted a resolution affirming the City's prohibition of the commercial sale and cultivation of medical marijuana under the principles of permissive zoning; and

WHEREAS, on November 8, 2016, California voters approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") legalizing and regulating adult recreational marijuana use, sale, cultivation, and delivery; and

WHEREAS, AUMA allows local jurisdictions to adopt and enforce local ordinances, that prohibit the commercial cultivation and sale of recreational marijuana; prohibit the delivery of nonmedical marijuana to locations within their jurisdiction; and prohibit the outdoor cultivation of marijuana for personal use; and

WHEREAS, under both the AUMA and the MCRSA, local jurisdictions retain the authority to prohibit the commercial sale and cultivation of marijuana, and prohibit the outdoor cultivation of marijuana; and

WHEREAS, on October 13, 2017 the Sausalito Legislative Subcommittee held duly noticed public meeting regarding marijuana regulations; and

WHEREAS, on November 8, 2017 the Sausalito Planning Commission held a duly noticed public hearing to consider various text amendments to the Sausalito Zoning Code, Title 10, regarding the regulation of both medical and recreational marijuana ("Code Amendments"); and

WHEREAS, on November 28, 2017, the Sausalito City Council conducted a duly-noticed public hearing at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council considered all evidence in the record and public testimony regarding the Code Amendments, including the Legislative Subcommittee's recommendations; and

WHEREAS, the City Council found that the Code Amendments are necessary for the protection of the public health, safety, and welfare; and

WHEREAS, the City Council found that the Code Amendments are consistent with the goals and policies of the Sausalito General Plan and other adopted ordinances and regulations of the City of Sausalito; and

WHEREAS, the City Council found on the basis of the experience of other municipalities that there is an increase in crime and other health and human safety issues such as burglaries, robberies, sales of illicit drugs, odor, and fire associated with the commercial cultivation and commercial activities related to marijuana; and

WHEREAS, the outdoor cultivation of marijuana plants produces a strong odor, creating an attractive nuisance and drawing attention to the location of financially valuable plants, creating a risk of burglary or robbery; and

WHEREAS, Section 10.80.070 allows for amendments of the Zoning Ordinance (Title 10 of the Sausalito Municipal Code) whenever the City Council determines that public necessity, convenience, or welfare would be served; and

WHEREAS, the Government Code Section 65858 allows the City Council to adopt, as an Urgency Measure, to adopt amendments to Title 10 of the Sausalito Municipal Code for a period of forty-five (45) days ; and

WHEREAS, the City Council has determined that the Code Amendments are categorically exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines Section 15060(c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and Section 15061(b)(3) that such adoption may have a significant effect on the environment; and because such adoption involves only feasibility and planning studies for possible future adoption of an ordinance that has not yet been prepared or adopted.

NOW, THEREFORE, THE CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

Part 1. The City Council finds and determines as follows:

(a) The above recitals are incorporated herein and are each relied upon independently by the City Council for its adoption of this urgency ordinance and amendments to Title 10 of the Sausalito Municipal Code in **Exhibit A**; and

(b) The adoption of this Ordinance is exempt from the application of the California Environmental Quality Act, pursuant to Sections 15060(c)(2) and 15061(b)(3); and

(c) There exists a current and immediate threat to the public health, safety and welfare, and California Government Code § 65858 authorizes the City Council to adopt, as an urgency measure, an interim ordinance prohibiting any uses which may be in conflict with the contemplated general plan implementing regulations and the proposal of zoning regulations that the City is considering or intends to study within a reasonable time; and

(d) There is no feasible alternative to enactment of this Urgency Ordinance that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect; and

e) In order to ensure the effective implementation of the City's land use objectives and policies, the City Council does hereby declare this Urgency Ordinance a necessary to protect the public health, safety, and welfare while the City considers revisions to zoning regulations related to cannabis (marijuana).

Part 2. Imposition of Urgency Ordinance. From and after the date of this Urgency Ordinance, the Ordinance amendments in **Exhibit A**, shall be approved for 45 days.

Part 3. Effective Date and Term. Effective Date and Term. This Ordinance shall take effect immediately upon its execution by the Mayor and certification by the City Clerk, and shall be in effect for a period of forty-five (45) days, unless repealed, amended or extended by further action of the City Council as provided in Government Code section 65858.

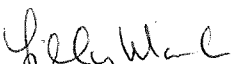
PASSED, APPROVED AND ADOPTED this 28th day of November, 2017, by the following called vote:

AYES:	Councilmember:	Burns, Hoffman, Cox, Mayor Withy
NOES:	Councilmember:	None
ABSENT:	Councilmember:	None
ABSTAIN:	Councilmember:	None



Ray Withy, Mayor, City of Sausalito

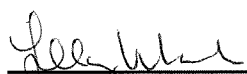
ATTEST:



Lilly Whalen, City Clerk

City of Sausalito

I hereby certify that the foregoing [Ordinance] was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Sausalito held the 28th day of November 2017.



Lilly Whalen, City Clerk
City of Sausalito

EXHIBIT A
City of Sausalito Municipal Code Amendments

SECTION 1. Section 10.44.320 Medical marijuana dispensaries is deleted.

SECTION 2. The following Chapter 10.47 "Marijuana Regulation" is hereby added as follows:

10.47.010 Purpose. In enacting this Chapter, it is the intent of the City of Sausalito to protect the safety and welfare of the general public by prohibiting medical and non-medical marijuana facilities, commercial marijuana activities, the delivery of all marijuana, and the outdoor cultivation of marijuana within the City's corporate limits in a manner consistent with State law.

10.47.020 Definitions. The following words and phrases, whenever used in this Chapter, are defined as follows:

- A. "Commercial marijuana activity" includes "commercial cannabis activity" as set forth in California Business and Professions Code sections 19300.5(j) and 26001(d), as may be amended from time to time, and includes the cultivation, possession, manufacture, distribution, processing, storing, testing, labeling, transportation, or sale of marijuana and marijuana products.
- B. "Cultivation" shall have the same meaning as set forth in California Business and Professions Code sections 19300.5(e) and 26001(e), as may be amended from time to time, and includes any activity involved in the planting, growing, drying, curing, grading, or trimming of marijuana.
- C. "Delivery" shall have the same meaning as set forth in California Business and Professions Code sections 19300.5(m) and 26001(h), as may be amended from time to time, and includes the commercial transfer of marijuana or marijuana products to another person, and also includes the use by a retailer of any technology or platform, whether owned or controlled by the retailer or independently licensed, that enables customers to arrange for or facilitate the commercial transfer of marijuana by a licensed retailer of marijuana or marijuana products.
- D. "Establish" or "operate" a medical or recreational marijuana facility means and includes: the opening or commencement of the operation of a medical marijuana or non-medical marijuana facility; the conversion of an existing business, facility, use, establishment, property, or location to a medical marijuana or non-medical marijuana facility; or the addition of a medical marijuana or non-medical marijuana facility to any other existing business, facility, use, establishment, property, or location.
- E. "Marijuana" shall have the same meaning as set forth in California Health and Safety Code section 11018 and Business and Professions Code section 19300.5(f), as may be amended from time to time.
- F. "Medical marijuana" is marijuana used for medical purposes where that medical use is deemed appropriate and recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of conditions such as acquired immune deficiency syndrome ("AIDS"), anorexia, arthritis, cancer, chronic pain, glaucoma, migraine, spasticity, or any other serious medical condition for which marijuana is deemed to provide relief as defined in California Health and Safety Code section 11362.7(h), as may be amended from time to time.

- G. "Medical marijuana facility" means any business, facility, use, establishment, property, or location, whether fixed or mobile, where medical marijuana is sold, made available, delivered, and/or distributed by one or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. A "medical marijuana facility" shall not include the following uses: a clinic licensed pursuant to California Health and Safety Code Division 2, Chapter 1; a healthcare facility licensed pursuant to California Health and Safety Code Division 2, Chapter 2; a facility licensed pursuant to California Health and Safety Code Division 2, Chapter 2; a residential care facility for persons with chronic life-threatening illness licensed pursuant to California Health and Safety Code Division 2, Chapter 3.01; a residential care facility for the elderly licensed pursuant to California Health and Safety Code Division 2, Chapter 3.2; a residential hospice; or a home health agency licensed pursuant to California Health and Safety Code Division 2, Chapter 8.
- H. A "Non-medical marijuana facility" means any building facility, use, establishment, property, or location where any person or entity establishes, commences, engages in, conducts, or permits another person or entity to establish, commence, engage in, or conduct any activity that requires a State license or nonprofit license under Business and Professions Code section 26000 *et seq.*, including but not limited to marijuana cultivation, distribution, transportation, storage, manufacturing of marijuana products, processing, the sale of marijuana or marijuana products, and the operation of marijuana microbusinesses. A "non-medical marijuana facility" includes any "commercial marijuana activity" as defined by Business and Professions Code section 26001(d).
- I. "Outdoors" means any location that is not within a fully enclosed and secure structure.

10.47.030 Prohibitions.

- A. Medical marijuana facilities. Medical marijuana facilities are prohibited in all Zones in the City and shall not be established or operated in the City.
- B. Non-medical marijuana facilities. Non-medical marijuana facilities are prohibited in all Zones in the City and shall not be established or operated in the City.
- C. Commercial marijuana activity. Commercial marijuana activity is prohibited in all Zones in the City and shall not be established or operated in the City.
- D. Property Owners. A property owner shall not rent, lease, or otherwise permit any person, business, or entity that engages in commercial marijuana activity to occupy real property in the City.
- E. Deliveries. No person and/or entity may deliver or transport cannabis from any fixed or mobile location, either inside or outside the City, to any person in the City, except as follows:
1. A person may deliver or transport medicinal cannabis or medicinal cannabis products to a qualified patient or person with an identification card, as those terms are defined in Health and Safety Code section 11362.7, for whom he or she is the primary caregiver within the meaning of Health and Safety Code sections 11362.5 and 11362.7(d).
 2. A licensed medicinal cannabis dispensary operating outside of City limits in compliance with Business and Professions Code sections 19300 *et seq.*, may deliver medicinal cannabis or medicinal cannabis products to a qualified patient or person with an identification card, as those terms are defined in Health and Safety Code section 11362.7, residing within the City.

3. Any person or entity delivering medical cannabis or medical cannabis products in accordance with this Section 10.89.030 E shall register with The City of Sausalito.

F. Outdoor cultivation. Outdoor marijuana cultivation is prohibited in all Zones in the City.

G. Indoor cultivation. Indoor marijuana cultivation is prohibited provided, however, that a person may plant, cultivate, harvest, dry, or process cannabis plants to the extent allowed under California Health and Safety Codes Sections 11362.1(a)(3) and 11362.77, subject to all restrictions under California State Law inside a single private residence or accessory structure to the residence located on the grounds of that residence, provided that the location is fully enclosed and secured against unauthorized entry, and provided that the following standards are met:

1. Marijuana cultivation including any lighting, plumbing, or electrical components shall comply with all applicable Building and Fire Codes.
2. The use of gas products (CO2, butane, etc.) for marijuana cultivation is prohibited.
3. Marijuana shall not be detectable by sight or smell from adjacent properties or public spaces.
4. The residential structure shall remain at all times an occupied residence, with legal and functioning cooking, sleeping, and sanitation facilities with proper ingress and egress. These rooms shall not be used for marijuana cultivation where such cultivation will prevent their primary use;
5. The property owner must provide express written consent allowing marijuana cultivation in the event any non-owner occupant wishes to cultivate marijuana on the property.
6. Marijuana cultivation shall not occur in both a detached structure and inside a residence on the same parcel. Only one cultivation area is allowed per parcel.

10.47.040 Enforcement. The City may enforce this Chapter in any manner permitted by law. Violation of this Chapter shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall create a cause of action for injunctive relief at the City's discretion.

SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance regardless of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases should be declared unconstitutional, invalid, or ineffective. To this end the provisions of this Ordinance are declared to be severable.